

MINUTES
OF THE
ENVIRONMENTAL PROTECTION COMMISSION
MEETING

OCTOBER 9, 2002

WALLACE STATE OFFICE BUILDING
502 EAST 9TH STREET
DES MOINES, IOWA

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MEETING MINUTES

CALL TO ORDER

The meeting of the Environmental Protection Commission was called to order by Chairperson Murphy at 10:00 a.m. on Monday, , 2002, in the Wallace State Office Building, Des Moines, Iowa.

MEMBERS PRESENT

Lisa Davis Cook
Lori Glanzman
Darrell Hanson
Kathryn Murphy, Chair
Jerry Peckumn
Gary Priebe, Vice Chair
Kelly Tobin
Terrance Townsend
Rita Venner, Secretary

ADOPTION OF AGENDA

The following adjustments were made to the agenda:

- Add: Oath of Office for Jerry Peckumn

Motion was made by Gary Priebe to approve the agenda as amended. Seconded by Terry Townsend. Motion carried unanimously.

APPROVED AS AMENDED

OATH OF OFFICE

Director Jeffrey Vonk administered the oath of office for Jerry Peckumn.

APPROVAL OF MINUTES

Motion was made by Terry Townsend to approve the minutes of September 16, 2002 as presented. Seconded by Lori Glanzman. Motion carried unanimously.

APPROVED AS PRESENTED

DIRECTOR'S REPORT

Director Jeffrey R. Vonk said that administering the oath of office reinforces for him the important role that they as Commissioners play in environmental policy in the State of Iowa. He said they had been appointed by the Governor to give the Department oversight and to help the Department ensure that they are complying with rules and regulations and carrying out the will

of the people of the state. He said it is often not an easy job and he would like to thank them for their time and willingness to serve.

PUBLIC PARTICIPATION

McCulley, Jane (Fremont Farms Expansion)

Jane McCulley, 1135 Old Six Road, Malcom, Iowa said that as neighbors to the Fremont Farms chicken facility they have endured many changes in their lives. This facility currently has 20 buildings that hold 135,000 birds per building for a total of 2,700,000 birds. Fremont Farms has built the 21st building and have started construction on the 22nd. She said if this expansion is allowed to continue they will have over 5,000,000 birds. Since the facility began in 1999 neighbors have experienced problems with flies and odors. A lawsuit has been filed asking for injunctive relief preventing further construction and expansion of the facility. The trial had been originally set for April 16, 2002, however due to the bankruptcy of Fremont Farms' insurance carrier the case had to be continued. The damage that has been done has not yet been determined; therefore they do not feel that the facility should be allowed to get any larger. She said Fremont Farms have been found in violation of their permits by the DNR twice and she asked that the Commission put a stop to their expansion until they can prove that they can handle what they have. Because the Commission has to comply with the law, she asked the Commission to consider the fact that until the law suit has been finished the laws have not yet been settled. If the Commission decided not to allow the expansion, the current buildings will still be in operation and their current permits will allow them to continue building until after the hearing therefore postponement will not hurt anyone.

Heck, Mayor Steve (Fremont Farms Expansion)

Mayor Steve Heck, 706 Clay Street, Malcom, Iowa said that a few years ago when Fremont Farms started the operation north of Malcom, there had been no public meetings to let the community know what impact the facility would have. The fly population was not too bad when the operation first started but as they added more buildings flies within the city limits have increased. Currently Malcom is sandwiched between two operations one is a hatcher located 2 ½ miles south of Malcom the other is the main operation holding over 2 million chickens. This year the citizens of the City of Malcom petitioned the City Council to do something about the fly problem. As it stands people are unable to sit out in their yards, have picnics in the city park because of the flies and this is why he has asked the County Supervisors to appeal the expansion. In addition he said they have asked the Department of Health to perform a health assessment for the fly situation within the city limits but to date have not received a response to their request. He said one of the duties of the DNR is to ensure that there is no violation of public health, at this time they feel the department is not doing that. On July 24, 2002, the DNR inspected Fremont Farm operations and found them to be in violation of their current permit but did not fine them. They told the company "In the future, notify the department's permit section of any changes made to the construction specifications made in the permit application prior to construction." He said he does not think it is fair that cities and other organizations would have had fines imposed for violations but this company did not. To put the situation in perspective, using DNR's map for confinements in the State of Iowa, in Polk, Linn, Johnson, Woodbury, and Dubuque Counties where there are large population centers there are at most one confinement

facility. He said his conclusion is that the corporations are either afraid to put a facility in these areas because of the lawyers or that the DNR is refusing to allow them. If this permit is approved the facility will house 5.2 million chickens, which in animal units converts to 130,000 hogs. Using the figure of 33 pounds of manure produced by one bird during its lifetime, one cycle would produce 86 million tons of manure. He urged the Commissioners to read the report from the university study on confinement facilities if they had not already done so.

Moffett, Sandy (Fremont Farms Expansion)

Sandy Moffett, 618 390th Avenue, Grinnell, Iowa said he has had the opportunity to visit Fremont Farms and he would in no way wish to suggest that they are not trying to adhere to the regulations as they exist. What they are doing is very impressive and high tech, but he feels it needs to be kept in perspective. When Fremont Farms started out they had 2 million chickens, which translates to 25,000 animal units or 62,500 hogs in one confinement. They currently have permits to expand to 4 million chickens; this translates into 40,000 animal units or 100,000 hogs. This new request for a permit will take them to 5.2 million chickens, which translates to 52,000 animal units and 130,000 hogs. He said it is his understanding that there are no hog operations in the State of Iowa that even come close to this size. The question he has is how big is big enough and he believes it is time to say that the capacity limit has been reached. This is done in other types of industry and he feels it needs to be done in animal confinement operations. It does present a potential public health problem. He said there will be information brought out in the lawsuit scheduled for January and he would like to urge the Commission to take time to examine all of the information that they have. Citizens of rural Iowa are having a difficult time, which is bringing about mental health problems. He said he would like to see everyone slow down and prevent doing something that they will be sorry for.

Earnhart, Dean (Fremont Farms Expansion)

Dean Earnhart, 1140 Highway 6, Malcom, Iowa showed a video of a fly infestation in his home. He asked the Commission to please slow them down.

Faust, Dennis (Natural Pork Production II Permit)

Dennis Faust, 1154 180th Street, Dexter, Iowa had his family distribute material to the Commissioners. He said when Robin Puisner from the Department of Natural Resources came to one of their meetings he asked her what they would need to do to stop this confinement facility from coming in. He said her response was to not give them the land to apply the manure to. He said they contacted most of the farmers from a five mile radius of the proposed facility and asked them for a pledge not to take manure from this facility. He referred to a map that showed the landowners who had agreed not to take the manure and said that it showed Mr. Weiss did not have adequate ground within a five mile radius to spread the manure produced by the facility and could not justify hauling it over five miles on a continual basis.

Faust, Rita (Natural Pork Production II Permit)

Rita Faust 1603 Walnut Avenue, Stuart, Iowa said their neighborhood have held a public meeting on this issue every Tuesday since January. On July 30, there was a public meeting at the Fairview Church south of Stuart to which they invited representatives from the DNR and from local and district NRCS. She played a tape of a question asked of Robin Puisner at this meeting.

Because the tape could not be heard clearly by the Commission, Ms. Faust said the question was “What would happen if you just said no?” to which she said Robin Pruisner responded, “We’ll

Powell, Clifford (Natural Pork Production II Permit)

Clifford Powell, 2386 160th Street, Menlo, Iowa said a field where Mr. Weiss plans to apply his manure is located south of his property. The field drains into the creek that runs through his farm. He said he wants for his daughter, what he had, to raise livestock and live on a farm with fresh air and clean water. He said his nephew who recently joined the army told him that if Iowa keeps its up he will not be coming back and Mr. Powell said his 12 year old daughter tells him she will not be staying.

Kalbach, Barbara (Natural Pork Production II Permit)

Barbara Kalbach from Dexter, Iowa said she will be living 2100 feet from a 7,000 sow hog confinement if this permit is issued and she would like to talk about the impact that such a facility would have on the people who live there. She said she had provided to the Commission by letter a demographic of the people who live within a two mile radius of the proposed facility. She said the impact will be immediate; the manure that will be applied to highly erodible land will impact their water supply. There is a residence within 400 feet of the proposed facility, it is the owner’s only residence, and he has two young children and few prospects for moving easily. Mr. Weiss has said he would inject manure into the highly erodible land, however the NRCS has state that manure may not be injected on D, E, or F slopes, which occur on all of the farms in the area. She said in spite of this fact the DNR has stated they could not legally prevent him from injecting on these slopes. She said within two miles of the proposed facility there are 13 infants and children and 21 elderly residents. Within 2100 feet there is a woman who suffers from Chronic Obstructive Pulmonary Disease and within ½ mile there is a woman who has only one lung. She said beyond the environmental impacts the banks have been discussing the possibility of not issuing mortgages or loans for residences because of the concern for large hog facilities moving into the area and lowering property value.

Cregeen-Menke, Donna (Natural Pork Production II Permit)

Donna Cregeen-Menke, 1906 E 25th, Des Moines, Iowa said she had grew up on a family farm in Harrison township, Adair County and her family made its living raising hogs and cattle. They were dependent upon the land to provide a living for them and the livestock. It was and is their responsibility to care for and nurture the resources that nature has given to them and they take this responsibility very seriously. This is the reason they do not plow waterways, they cut thistles and other noxious weeds that grow in their pastures and they rotate crop land. The land that supports her family also provides a habitat for wildlife. Family farming is not just a profession, it is land stewardship, and her family has had the privilege of being a part of this for over 100 years. Studies have shown that property values and quality of life will decline dramatically if this facility it allowed. She asked the Commission to preserve this way of life. She asked them to deny the permit because it is the right thing to do.

Beach, Ron (Natural Pork Production II Permit)

Ron Beach from Harlan, Iowa said that his wife and three small children live in Harlan and he came to the meeting to offer his first hand observations and knowledge about Gary Weiss and Natural Pork Production. He said in 1996, while working as an agricultural loan officer at Farm Federal Services in Harlan he first met Gary and Diane Weiss and personally observed Natural Pork Production II's (NPPII) operations. In 1998, when NPPII was ready to build its first sow unit, Gary Weiss came to him and requested financing. Because of the negativity that could be involved in this situation he said his company was very cautious about whom they would get involved with. After extensive investigation of their plan his company decided that Gary and Diane Weiss were the type of dedicated producers that the state should have raising hogs. He said they liked the fact that NPPII's business plan was to make weaned pigs available to independent farmers. In 1999, he and his family moved to Northwest Iowa and he lost contact with Gary and Diane Weiss for approximately three years. In February of 2002 he and his family received an offer to become a partner in NPPII's operation. After investigating the company he decided to accept the offer and he moved his family back to Harlan. Now that he is on the inside he has been able to observe how the company operates. He said he has observed people who had protested the original site tell him that they had been off base and uninformed about how NPPII would be operated. He said heard from a family living less than a mile from the original facility that said they have never smelled the site. Neighbors who had been adamantly opposed to the facility are now coming to them asking to buy the manure to fertilize their crops. He said he has observed the company that is proud to be expanding employment opportunities with over 40 employees in Shelby County and paying 150 to 200 percent of the average county wage plus health insurance and 401K plans. He said he has observed a company that is continuously adjusting its operations and reinvesting its profits to address concerns such as changing the design from an 8 foot pit to a 12 foot pit to make sure that manure application happens only once a year and one that pays for more manure leases than it legally needs to simply to ensure that it will be able to inject manure rather than surface apply. NPPII has spent several months and a significant expense working with the DNR to adjust and modify the manure management plan in order to address the concerns expressed by the public. All being human, he has observed times when there have been errors made but he has been impressed with the immediate reaction to those errors. He said he can assure the Commission that the team at the DNR takes their obligation to the citizens of Iowa very seriously, they challenged several issues, came on site to observe the operations, and have met with the company to express their concerns and understood the company's commitment to operating within the laws and regulations of the state.

Goplerud, Bart (Natural Pork Production II Permit)

Bart Goplerud, 604 Locust, Des Moines, Iowa said he has been asked to speak on the behalf of a number of concerned families located in the area that this facility is proposed. He said he is fully aware that the Commission is bound by the law and he would like to give them the opportunity to follow the law while doing something right for those families. He said the constant theme he would like the Commission to be aware of is that this is not a matter of if but when there will be problems with this facility in a number of different areas. He said there are over 150 families that have signed pledges not to take the manure from this facility equaling 58,000 acres of land. While he is allowed to transport to a greater distance than five miles it comes at a cost and a risk. The Commission should deny the application for permit to construct because Mr. Weiss has

voluntarily agreed to reduce the number of head at this facility from approximately 7,000 to 6,500 out of concern for weight limitation and nitrogen levels. While this is good in theory it is hard to believe that 500 empty stalls will remain empty when there is an opportunity for profit by filling those stalls. He said it is his understanding that Mr. Weiss has already exceeded the number of head allowed at another facility at which there was a fire in August of 2002. He said he also understands that Mr. Weiss has agreed to voluntary inspections to alleviate some of the concerns but have asked for a 24 hour notice prior to the inspection due to biohazard concerns. Mr. Goplerud said those biohazard concerns exist at all times and there is no need for notice except to give him the opportunity to correct a wrong. He said the application should be denied because the manure management plan as submitted is flawed due to the fact that the land that has been leased by Mr. Weiss for the injection of manure is of the type that does not allow injection according to the current conservation plans. If he uses the same land under the current terms the manure will have to be spread and if that is the case there are concerns for runoff, there are setback distances that would be applicable, and he would not have the necessary acres to meet the manure management plan. He said he has provided the Commission with an affidavit from a man located in Des Moines with the Polymer Concrete Company and additional material that states without doubt that concrete will crack, erode, and corrode due to manure waste. There is 130 times more animal waste in this country than there is human waste and there are not many things that are more highly corrodible than waste. Although society has highly regulated its own wastewater treatment plants and facilities, we do nothing to regulate the containment of structures in a confinement facility. The minimum standards set forth in the Code allow the Commission to raise the bar higher. He said they have the ability to deny the permit and ask him to use liners, sealants, coatings, polymer concretes, and secondary containment facilities in order to protect the environment. He said they have the ability to deny the permit on a legal basis and to set the bar higher for his reapplication process.

Arnold, Wayne (Natural Pork Production II Permit)

Wayne Arnold, 1103 Redbend Road, Harlan, Iowa said he is a neighbor to Mr. Weiss' first hog confinement unit. On his farm there are two houses; one is rented to a lab technician who works in town. He and his wife live in the other house, which also has an apartment that they rent out. He said his wife has allergies as did a tenant of the apartment who had lived there for two years and neither have had any problems with increased symptoms. He has seen an increase in demand for the apartment he rents out due to the fact that there are eighteen employees working at this unit. He has had no increase in fly population in the area and has even seen a decrease from when he was raising hogs himself. He said in the past four years he has been told by at least 20 different people that they were surprised that they could not smell the hog facility

Hinners, Kevin (Natural Pork Production II Permit)

Kevin Hinners 3207 Eagle Avenue, Exira, Iowa said he raises hogs and has been around hogs all of his life. He said he lives with his wife and three children one mile north of Mr. Weiss' current facility and they have never smelled the facility from their home. The facility does smell when you drive on the site but he has not heard any complaints by the neighbors. He said he had intended to purchase baby pigs from Mr. Weiss but was unable to due to high demand so he now gets them from out of state.

Bloome, Bob (Natural Pork Production II Permit)

Bob Bloome from Audubon, Iowa said he was a veterinarian and had grown up on a traditional family farm and feels fortunate to continue to work with the livestock industry in traditional operations as well as providing veterinary services for Mr. Weiss. He said the type of operation he grew up on smelled worse and was more of a risk to his family's health and the environment than the facilities being discussed. He said he and his wife and four small children live within 200 yards of 3,000 pigs and he has a great relationship with the neighbors who have the facility. He said pigs and people can coexist.

Greenwood, Kerry (Natural Pork Production II Permit)

Kerry Greenwood, 1727 Adair-Madison Avenue, Dexter, Iowa said he moved into his current home approximately seven years ago. At that time the assess tax valuation from Adair County was \$35,800, it is now assessed at \$48,500. He has estimates from four separate real estate agents as to the current market value of his home and they were from \$175,000 to \$225,000. However if the proposed confinement facility goes online he has been told that within three years the assessed value on the property would be no better than it was seven years ago.

Hoadley, Dick (Natural Pork Production II Permit)

Dick Hoadley, 3356 192nd Street, Dexter, Iowa said DNR rules state, "The DNR will approve the conservation plan component of the manure management plan based on the conservation plan summary provided by the DNR for land classified as highly erodible at the time the manure management plan is submitted and reviewed." At that time the current conservation plan states that manure cannot be injected on D, E, and F slopes. If you remove the D, E, and F slopes from their plan they will not have enough acres.

Reif, Reverend Charlotte L (Natural Pork Production II Permit)

Reverend Charlotte L. Reif, 1265 State Highway 25, Menlo, Iowa said that the manure management plan calls for manure to be injected in land that is right next to the pond that they swim and play in. What they now call nutrient used to be called manure. Nutrient means to continue life but she said she does not believe the nutrient that Mr. Weiss intends to spread nurtures, she believes it poisons. She said she hears peoples pain and she is frustrated from it and the members of the Commission are their last hope for justice. She said there cannot be economic opportunity if we poison our land and community and the souls of the people. Just because it is legal does not make it moral or ethical.

Biggs, Corrine (Natural Pork Production II Permit)

Corrine Biggs, 2160 Stuart Road, Greenfield, Iowa said she and her two children moved to Stuart, Iowa from Omaha, Nebraska to get away from the pollution, traffic, gangs, drugs, and most of all crime. She said she felt as though there was a crime being committed in her back yard. Her fiancé has severe allergies and her two sons have asthma. They are avid hunters and fishermen but she fears they will not be able to continue these activities if the confinement is allowed to be built.

Terry, Linda (Natural Pork Production II Permit)

Linda Terry, 2125 Stuart Road, Greenfield, Iowa said that a local realtor was recently approached by a couple from Dickenson County looking for land to build their retirement home. One of their first questions was if there were hog confinements in Adair County. She said she was there to appeal to the Commission's sense of justice regarding the intention of the Department of Natural Resource to permit a 7,000 sow hog facility in her township of Harrison in Adair County. She said she has a grandson who just turned 14 months old who has already developed respiratory problems. He and his family live a mile and a quarter from the proposed site of this facility. Her son and daughter-in-law purchased a property with an abandoned farm house and have put a major amount of money into it to make it livable because they wanted the quality of life that rural living has to offer. She said Gary Weiss, who is not a resident of Adair County has decided to purchase a piece of land and build his facility for purposes of profit. It is very probable that this facility will dictate that her son and his family will have to abandon their dream and move else where. She said Gary Weiss has the right to site his hog facility in their midst and their community has the right to protect their quality of life. Given Mr. Weiss' inability to follow and respect the rules of the Department of Natural Resources she requested that the Commission reverse the intention to permit.

Sackett, Jeff (Natural Pork Production II Permit)

Jeff Sackett, 2364 – 170th Street, Menlo, Iowa said his concern is that the land leased by NPPII for manure management lies just west of his residence. The land is predominately D, E, and F slope land. These are steep sloped hills prone to surface drainage due to their sharp slopes. At the bottom of this hill lies Turkey Creek and about forty feet from the creek is his well, which is 26 feet deep with a limestone base. He was told by his well digger and by his county sanitarian that the limestone base makes the well highly susceptible to pollutants that might be in the creek. There are four children under ten years of age that drink from these wells and he fears for their safety.

Shilling, Kevin (Natural Pork Production II Permit)

Kevin Shilling, 2123 265th Street, Greenfield, Iowa said he also opposes the granting of a permit to Gary Weiss' hog confinement in Adair County based on his inability to get his application correct after four tries. He has had to make significant changes to reflect the truth or the actual situation that exists in the county. He said this was an opportunity to start correcting what is environmentally wrong in Iowa. Over 3,000 people in the area oppose this facility. He said he had been told at a political forum recently that Gary Weiss had been told four times not to dump manure into his pit for dead hogs but he did it anyway.

Lovely, Brett (Natural Pork Production II Permit)

Brett Lovely, 1755 York Avenue, Dexter Iowa said he was the resident that lives 400 feet from the proposed site. He has a well that lies 140 feet from the well that Mr. Weiss intends to use as a water source and he fears that it will deplete his water supply. He said in the fall, last year, he was homeless and he was given a trailer home, which he placed on the property that is now adjacent from the property Mr. Weiss intends to build on. He had water and electricity ran to the property but due to weather conditions he had been unable to put the sewer in until the frost left

the ground. He established residency in January and found out about the proposed facility in the middle of February.

Randy Clark, attorney for the Department of Natural Resources said that the Commissioners had been provided, as part of their package, a two page summary of legal provisions that pertain to these hearings. He said Iowa Code Section 455B.200A(1) generally provides the department has the decision to approve or disapprove an application such as this, based upon whether the application is submitted according to the procedures that are required by the department and that the application meets the standards established by the department. He said the Commissioners have established the standards through the adoption of rules. The department has looked at the rules and reached its interpretation; however, as the Commission, they have the right to interpret their own rules. The department staff has proposed to issue these permits based upon its preliminary determination that the applicants followed the procedures and that they have met the standards that have been established. The EPC has been asked to review that decision and the parties have presented their arguments in writing. The Commission has three options in responding to these demands for hearing: it can affirm the issuance of the permit as drafted; it can affirm the issuance of the permit in a modified form; or it could deny the issuance of the permit, which would entitle the applicant to appeal, thus going to a contested case. In addition the Commission is required to state its reasons on the record for the option they choose. He said the decision for these hearings must be made within 35 days of the department's receipt of the demand for hearing. Therefore the decision for Poweshiek County must be made by October 11, and for Adair County the deadline is October 15.

Darrell Hanson said if someone made a motion to affirm the permit and that motion did not pass, in all his previous experience it would automatically cause the permit to be denied. He asked how the Commission would then be able to state its reason for denying the permit.

Randy Clark said the Commission's rules state that they need a majority of the Commission members to take action.

DEMAND FOR HEARING - POWESHIEK COUNTY - FREMONT FARMS OF IOWA,

Wayne Gieselman, Administrator of the Environmental Services Division presented the following item.

On August 23, 2002, the department issued a draft construction permit to Fremont Farms of Iowa, L.L.P. (Fremont Farms), indicating a preliminary decision to approve an expansion of Fremont Farm's existing poultry layer operation near Malcom, Iowa. Notice of this preliminary decision was delivered to the Poweshiek County Board of Supervisors (Poweshiek County) on August 27, 2002. On September 4, 2002, Poweshiek County notified the department by facsimile of its intent to demand a hearing. The demand for hearing was mailed by Poweshiek County on September 5, 2002, and received by the department on September 6, 2002. Poweshiek County and Fremont Farms have requested the opportunity to make oral statements. Pertinent documents relating to the demand and the department's and/or Fremont Farm's response to it have been provided to the Commission.

The Commission is requested to review this matter and render a final decision by October 11, 2002, which is 35 days from the date the department received the Board's demand for hearing.

Wayne Gieselman said that Fremont Farms of Iowa is an existing facility, which has existing construction permits from the Department. They have requested a permit for further expansion which the department proposes to approve.

Roudabush, Roger, Poweshiek County Supervisor

Roger Roudabush, Poweshiek County Supervisor said they have taken the position to extend the opportunity to the public for a hearing. He said as county supervisors they believe it is their obligation to represent all citizens of Poweshiek County. Fremont Farms has brought employment and economic opportunities to the local farmers by creating job and boosting the price of grain in the immediate community but on the behalf of the residence in the area of Fremont Farms they believe the ongoing fly problem must be solved. He said solving the fly problem would show that Fremont Farms intends keep their policy of being a good neighbor.

George, Steven - President and CEO of Fremont Farms of Iowa

Stephen George, President and CEO of Fremont Farms of Iowa said he grew up at a farm in Sioux City and he joined Fremont Farms of Iowa earlier this year. He introduced Joe Fuller, Vice President of Operations; Randy Peters, Lead Construction Manager; Larry Roehl, a registered professional engineer who worked with Fremont Farms on their permit applications and Gary Myers, attorney for Fremont Farms. He said he would cover the background of the company, summarize their current status their plans for expansion, and finally he said he would address some of the comments the Commissioners had received both in writing and verbally. He said Fremont Farms of Iowa takes their environmental responsibilities very seriously, they care about their impact on the community, and they have complied with all of the legal and regulatory requirements for this expansion permit. Fremont Farms of Iowa was formed in 1998 and is the leading egg farm and production facility in the State of Iowa. It is located approximately two miles north of Malcom near exit 191 on Interstate 80. It is about ten miles east of Grinnell and twelve miles north of Montezuma. Currently they have twenty layer houses, a feed mill, and a state of the art breaking plant where eggs are liquefied, processed, and prepared for shipment. He said Fremont Farms currently purchases approximately 2.5 million bushels of corn per year from local farmers as well as soybean meal and various other supplies either locally or from Midwest suppliers. They use professionally designed nutrition and the latest technology to grow and care for their birds. They provide local employment to over thirty people involved in the care of the birds and the running of the processing plant. The liquid egg they produce is sold to major food processing companies for use in such things as bread, pastas, and cake mixes. He said Fremont Farms of Iowa has a record that is exemplary. They have expended considerable time, energy, and expense to meet and often exceed the requirements of the regulations. They are known in the industry as having a very clean and modern facility and for going the extra mile. He said all of their water drainage solutions are professionally engineered and designed. All of the drainage ditches are either seeded or rocked and concrete bottoms have been installed in virtually all of the ditches that carry large amount of water. Silt fences are installed anywhere that they are needed to control drainage and a water storage pond has been installed in the northwest corner of the facility to trap water or any sediments that might be flowing from the layer building. They have rocked the area between layer buildings to prevent erosion from the

runoff of water from the roofs of the building. Any portion of their land that is not being utilized has been seeded with alfalfa to further help with drainage issues. The one notice of violation they have received was because after the DNR approved the plans for the new style layer house in October, 2001, they had made a minor design change to add 15 feet to the length of the building in order to allow room for some equipment changes and the company had not realized that the change had not been communicated through their engineer to the DNR. He said he believes that Fremont Farms has attempted to work with the community in a positive way. In an effort to improve the communications between Fremont Farms and the community they are planning to meet with the City Council of Malcom to open a dialog and attempt to help them with some of their issues. One of the major complaints deals with flies; however the insect control program used by Fremont Farms is considered first rate and is consistent with the most modern industry practices available. He believes that their preventative proactive program has proven to be successful. As part of their preventive program Dr. Ken Holshir, an entomologist from Iowa State University has visited their site at least annually and has written letters after each visit, which have been included in Fremont Farms' written response to the demand for hearing. In his most recent review, Dr. Holshir gave Fremont Farms extremely high marks in their insect control program. He said flies can only breed where there is a proper moisture level, in the poultry industry the manure is kept as dry as possible. The buildings at Fremont Farms have been designed to produce a lot of air flow through the animals and to prevent moisture from getting in from the outside. The nutrition program is designed minimize fly production and they use a nipple system for watering so that the birds can get the water they need without dripping and employees inspect daily to prevent leaks. They will sometimes introduce commercial products into the manure storage itself to prevent larvae formation and spray around the buildings with commercial insect sprays. Fremont Farms egg breaking plant cannot operate unless there is an inspector on site from the US Department of Agriculture at all times. If there had been a fly infestation at their facility it would have been shut down by the USDA. The Mayor of Malcom has submitted comments stating that there are an unusual number of flies in Malcom that he believes Fremont Farms is responsible for, however there are a large number of other potential sources of flies in and around Malcom, which are much closer than the Fremont Farms facility. He displayed a map that showed where livestock is located and where manure is spread. He said the gentleman who had shown the video during public participation is involved in a lawsuit against Fremont Farms and is trying to seek economic rewards. In addition to that fact it is unknown under what conditions the video was made. He said he was surprised to hear a complaint dealing with odors because they feel they do not have any considerable odor. He said the company has volunteered to participate in study to monitor ammonia levels around livestock facilities.

Kelly Tobin asked if there was any information available about the fly situation prior to the arrival of Fremont Farms.

Stephen George said there is no data available but it might be important to note that the complaints were strong in 1999, which was Fremont Farms first year of operation, there were very few complaints the following two years, and then the complaints increased again this year. He said if you look back to the weather records, 1999 and 2002 were both wet years.

Jerry Peckumn asked how the manure becomes dry.

Joe Fuller, Vice President of Operations said when the manure is produced it is roughly 70% moisture, but the air flow in the building and a natural heating process causes the manure to dry to 35 to 40% moisture.

Jerry Peckumn asked how the manure was applied to the ground.

Joe Fuller said they haul the manure to the fields in dump trucks and use knife spreaders to apply it. He added that they do not haul any more out to the field than can be applied before the end of the day.

Jerry Peckumn asked why they had changed the design for their new buildings.

Stephen George said that it was in response to what they believe will be a changing market due to pressure from the animal rights movement.

Reza Khosravi said that Dr. Sara Smith, Review Engineer has worked on this permit since April and would be giving a short presentation on this project.

Dr. Sara Smith said the department received an application for expansion permit on April 5, 2002 and because they met the requirements they were not subject to SF2293. Fremont Farms has received three permits; the first was for the construction of buildings 1 through 16. In 1999 they received a second permit to add 14 more buildings of the same size as the first. However after they had completed building 20, in 2001 they applied for a supplement of a construction permit to modify and replace the ten buildings that had not yet been constructed with five building that were larger in size. This final permit will add three more buildings for a total of 28. The manure from the new buildings will be stored in a separate manure storage building. She said residents of Poweshiek County with this demand for hearing have voiced complaints about the fly problem that is allegedly attributed to Fremont Farms of Iowa; however the department does not have any regulations that are enforceable for fly control in livestock facilities. The department is unable to enforce rules dealing air quality standards until December, 2004. She said although Fremont Farms received a notice of violation for increasing the size of their buildings without prior approval from the department, these modifications did not increase the animal weight capacity and did not affect any separation distances. It has been alleged in the demand for hearing that Fremont Farms was not maintaining best management practices with their NPDES general permit number two. The department made an investigation of the site and determined that they are in compliance with all requirements of the permit and have thus renewed the general permit. In response to the complaint that Fremont Farms does not have a manure management plan, Fremont Farms submitted documentation that shows the manure is and will be sold under Iowa Code Chapter 200A therefore no manure management plan is needed.

Jerry Peckumn asked how it is determined that the manure is dry.

Dr. Sara Smith said the definition as stated in Iowa Code 200A, "Dry animal nutrient product means any unmanipulated animal manure composed primarily of animal excreta, if all of the

follow apply: a. The manure contains one or more recognized plant nutrients which are used for their plant nutrient content. b. The manure promotes plant growth. c. The manure does not flow perceptibly under pressure. d. the manure is not capable of being transported through a mechanical pumping device designed to move a liquid. e. The constituent molecules of the manure do not flow freely among themselves but do show the tendency to separate under stress.”

Darrell Hanson asked if the department received notification prior to the change in building design would there have been any reason to deny Fremont Farms permission to change the design of their buildings.

Dr. Sara Smith said the department would have looked at the reason for the change and whether or not it would affect the manure storage capacity, separation distances, or the way the manure is stored. In this instance the change did not affect any of these aspects so it would have been approved.

Jerry Peckumn asked if the department was allowed to inspect these facilities unannounced.

Randy Clark said that he believed the department was required to give prior notice and the department inspectors need to adhere to bio security standards of the company.

Wayne Gieselman said because department does not wish to spread disease around the state it is standard practice to give a facility 24 hour notice of an inspection, however if the department had a need to they could make a surprise inspection.

Jeff Vonk asked the County Board of Supervisors if they had taken a formal position either in favor of or opposed to the expansion of the Fremont Farms facility.

Roger Roudabush said that the Poweshiek Board of Supervisors has not taken a formal position. He said they feel as elected officials they are obligated to represent all of the people of the county and this industry does serve a significant portion of those people in the immediate area. It is their strong feeling however that the fly situation has been an ongoing problem. He said he visited the farm and some of the neighbors of the facility and he notes that there are fly problems from time to time. He said they feel that Fremont Farms should make every effort, as they have in the past, to continue to fight this problem. He said that he feels that if Fremont Farms wishes to be a good neighbor, which he believes they try hard to be, they must continue to fight the fly situation and any odor that may come from their facility.

Darrell Hanson said while he does sympathize with the situation with the flies because he grew up in an area that had a lot of small family dairy operations; he does not see from the departments rules that a fly problem is grounds for denying a permit. The other substantive issue brought up was that of the notice of violation for changing the building design. Contrary to what others have said he is aware that the department does work with people to bring them into compliance rather than fining them. He said in order to deny this permit the Commission would have to cite a specific rule or statute that had been violated and he does see that that has happened.

Jerry Peckumn said this permit has a new style of building that has fans drying the manure as it is being transferred out of the building on a conveyor and should therefore produce dryer manure. He asked if the conveyor would run constantly.

Stephen George said that it would only run once a day.

Rita Venner asked if the facility still utilized a beneficial insect to help control the flies.

Joe Fuller said they seed the manure with the insects twice a year.

Gary Priebe said that this seems to be a well run operation, they have met all of the rules that they need to meet to be issued a permit. He said he would like to see them stay on the fly problem and see if it can be determined where they are coming from but otherwise he would like to move that they affirm the permit. Seconded by Lori Glanzman. Motion carried unanimously.

PERMIT AFFIRMED

DEMAND FOR HEARING ADAIR COUNTY - NATURAL PORK PRODUCTION II

Wayne Gieselman, Administrator of the Environmental Services Division presented the following item.

On August 20, 2002, the department issued a draft construction permit to Natural Pork Production II (Natural Pork), indicating a preliminary decision to approve construction of a new swine farrowing/gestating confinement feeding operation near Greenfield, Iowa. Notice of this preliminary decision was delivered to the Adair County Board of Supervisors (Adair County) on August 23, 2002. On August 29, 2002, Adair County notified the department by facsimile of its intent to demand a hearing. The demand for hearing was mailed by Adair County on September 6, 2002, and received by the department on September 10, 2002. Both Natural Pork and Adair County have requested the opportunity to make oral statements. Pertinent documents relating to the demand and the department's and/or Natural Pork's response to it have been provided to the Commission.

The Commission is requested to review this matter and render a final decision by October 15, 2002, which is 35 days from the date the department received the Board's demand for hearing.

Wayne Gieselman said the review of this permit was done under the old statute as the application was submitted quite sometime before the new statute came into effect. There had been several public meetings in Adair County and the local residents have been meeting weekly. A draft permit has been issued for this facility and it has been appealed by Adair County. He said the engineer who reviewed the permit, the field inspector, and the person who did the manure management plan review were there to answer any questions the Commissioners might have.

Hight, Clint, Adair County Attorney

Clint Hight, Adair County Attorney said he was there on the behalf of the Adair County Board of Supervisors who has filed a demand for hearing in this matter. He said in their complaint they

listed several points of contention that they feel give the Commission reason to deny the permit for this facility. He said although there have been several expert opinions submitted to the Commission, everyone who lives in Iowa knows that there are only two kinds of concrete, one that is cracked and one that is going to crack. Whenever there is cracks in concrete, liquid will flow through those cracks. On the issue of the manure management and Conservation compliance, the Department of Natural Resources sent a letter to NPPII on August 12, 2002, in that letter they stated that it was the department's position that they should not approve a manure management plan that will result in noncompliance with a landowner conservation plan. He said to their knowledge the manure management plan is still not in compliance with landowner conservation plan. He said he had contacted the Adair County Manager for NRCS and was told that the information could not be released. The reason the county is concerned is because most of the land listed in the manure management plan is on highly erodible, D, E, and F slopes. The Conservation commission has indicated to NPPII and the department that under the current conservation plans of the landowners of these parcels of land injection of liquid manure would not be allowed. In spite of this the manure management plan submitted by NPPII calls for the injection of manure in these slopes. He said it was the County's position that the DNR and the Conservation Commission have similar goals, which is to protect the environment; therefore the DNR should not issue a permit that will knowingly violate Conservation rules and regulations. He said Autumn Dean was there to give the Commission additional information on this issue.

Dean, Autumn,

Autumn Dean said her sole concern with the permit application is the conservation compliance issue. According to the soil survey book for Adair County all F slopes should be in pasture, however the properties in question are being farmed. She took Wayne Gieselman on a tour of the fields to show him that they were already out of compliance, to which she said the department responded that conservation compliance was not their problem. DNR rules state if the ground used for a manure management plan is highly erodible the applicant is required to submit the conservation plans with the manure management plans, which NPPII did not originally do. She said they requested NRCS to inspect the fields for compliance, which they did on August 29, 2002, however NRCS was not able to release their findings prior to this hearing. Ms. Dean said this permit was issued to Mr. Weiss with the condition that before he spreads manure on the fields, someone from the DNR will be present to ensure that the waterways are not polluted. She said that a letter from the DNR states they will be reviewing and developing new rules and regulations on the issue of slopes.

Clint Hight said if NPPII spreads the manure any other way they would not have enough acres to comply with the permit. He said that he has asked Barb Kalbach to address the water requirement issue for the Department.

Barb Kalbach said that Mr. Weiss has indicated that he would use less than 25,000 gallons of water per day and would therefore not need a water permit for this facility. However according to a publication from the Department of Public Health dated 9/25/02 finishing hogs drink 3 gallons of water per day while sows and their litters may drink as much as 8 gallons. Using that information she determined that usage for drinking water alone was over 30,000 gallons a day. In addition facilities that use fresh water to flush the gutters use an additional 15, gallons per

finishing hogs or 35 gallons per sow and litter per day. As a conservative estimate she multiplied the number of pigs by 10 gallons for usage other than drinking and this facility will use at least twice the 25,000 estimate made by Mr. Weiss. She said there had been no mention of retention ponds in any of the documentation reviewed until they received NPPII's response to the demand for hearing where they mention two retention ponds, which are not indicated on the site map. NPPII proposes to draw the necessary 25,000 gallons from a small well on the NW corner of the site. It is a farm well that was dug several years ago and is located 100 feet from the well used by the nearest resident. Mr. Weiss has indicated that Zenia Water is available but depending on the amount of water he wanted to draw from them he would be required to run a line from a few miles away.

Clint Hight said it was his understanding that the DNR is using water figures from a 1971 survey. He said the Commission heard from Mr. Lovely earlier that his residence will be located very close to this proposed facility. There are documentations attached to the demand for hearing that show that Mr. Lovely moved onto the property in January and filed application to have a septic tank placed on the property. Due to weather related difficulties however the septic system was unable to be place in before NPPII filed their initial application that has since been revised at least three times. In their response the DNR has said that Mr. Lovely's residence does not qualify as a residence because it was not actually hooked up to the septic system. He said Adair County is asking the Commission to interpret the term residence a little more broadly than the DNR has done. He asked Autumn Dean to address the pattern of error issue for the Commission.

Autumn Dean said she had reviewed three prior Weiss permits and found that on every one of his permits the same errors occurred despite the fact that the same engineers processed them. She said that as a follow up to what Mr. Hight had mentioned, she contact Reza Khosravi to ask him what criteria the DNR used to determine water consumption by pigs and she received a fax from Reza of the front cover from the 1971 version of the Midwest Plan Services. She contacted the people at Midwest Plan Services and was told that this publication had been updated every year in the 1970's, four times in the 80's, once in the 2000's; and that a new book would be coming out in 2004.

Clint Hight said according to NPPII's final application, if the hog numbers and the weights were accurate, they would meet minimum standards for animal weight and nitrogen concentrations; however the County is not able to concede that those weights submitted in the application are an accurate representation of what actually happens at the NPPII facilities. In its response to the County's demand for hearing the DNR states that NPPII's numbers are assumed to be accurate and a good benchmark for starter feeder operations. The problem is that this is not a starter operation because there are three other facilities operated by NPPII and the DNR does not need to assume anything. NPPII has an identical facility in Shelby County which is permitted for 6,974 animals. The original application for this proposed facility called for the same number of animals but that number was lowered to 6,420 in order to stay under the 2,000,000 pound limitation which would cause them to comply with further regulations. When they reduced their number they said it was their management policy to always keep 10% of the pins open for moving animals back and forth. As a result of the fire in Shelby County the DNR found that the farrowing house which was supposed to house 840 animals actually housed 864 animals. In

addition on at least one occasion this facility had as many as 7,395 animals in their facility. The question that Adair County has is if it is indeed a management practice that NPPII has to leave five hundred spaces available how is it that they had 421 more animals at their Shelby County facility than they were permitted to have. He said the DNR issued the permit based on assumptions that are now known to be at best inaccurate. The citizens of Adair County are asking that the Commission to deny the draft permit.

Jerry Peckumn asked if the 2,000,000 pound limit was an average or a maximum weight.

Wayne Gieselman said it is a statutory requirement that any operation that has more than 2,000,000 pounds average weight at full animal capacity be required to have aeration facilities in their manure storage structure.

Director Jeffrey Vonk asked if the Adair County Board of Supervisors voted on a resolution either in favor or opposed to the issuance of the permit for this facility.

Clint Hight said he does not know if they actually took a formal position as it was not discussed.

A member of the Adair County Board of Supervisors said the board voted five to nothing that this permit should be appealed. He said according to the minutes from their meeting the following resolution was passed: “ The board of supervisors of Adair County, Iowa on behalf of their constituents, specifically requests that the Environmental Protection Commission overturn the decision of the Iowa Department of Natural Resources to issue a construction permit to Natural Pork Production II.”

McAfee, Eldon, Attorney

Eldon McAfee said he had presented the written response for the Commission and he would respond to any legal questions they may have, but he would like to have Mr. Gary Weiss and others present their information. He introduced Gary Weiss, owner of NPPII, Darrell Olson, with Audubon Manning Bed Clinic who will address questions about the manure management plan, and Dennis Johnson, consulting engineer who had prepared the permit application. He said he would like to address a couple of legal issues that had been mentioned during the counties presentation, first the County Attorney Clint Hight said that if the Commission were to deny the permit today that NPPII would have other avenues such as a contested case hearing, however as he reads rule Chapter 65.10 (7) it states that while this is not a contested case it is the final agency action. He interprets that to mean that there can be no appeal to an administrative law judge in this situation. He said the Commission will hear a lot of discussion about animal weight capacity; prior to 1995 Iowa used animal units to determine whether or not a permit was required. In 1995 the law moved from animal units to animal weight capacity with the belief that it would be a better indicator as to the amount of manure that would be produced. SF2293 moved back to the use of animal units; however this application was submitted prior to the passage of SF2293 so this permit is still under the standard of weight capacity. He said the key for animal weight capacity as it is defined in the law is determined at full animal capacity, which is not determined by the number of animals a facility will hold but how many animals a producer will confine. Under the weight capacity standard, Iowa Law does not establish a limit on the

number of animals. Weight capacity is determined by the average weight over the production cycle.

Weiss, Gary

Gary Weiss said NPPII is a company that he and his wife began in 1998. He said they chose the name Natural Pork Production because of the valuable nutrients available to them. They have worked hard to be environmentally conscious over the years and their experience is that manure from pork production, on Iowa's rich farm ground, gives farmers a competitive edge, therefore they treat it like the valuable resource that it is. He said he and his wife grew up in Iowa and had the desire to move back to the State to raise their family, which they did in 1988. They are the majority owners in NPPII and have invested heavily in the company and are proud to join the many pork producers in the state as they supply other independent farmers with weaned pigs to finish. They believe that Iowa is a great place to raise pigs and a great place to raise families and when done right they do not have to be mutually exclusive. He said they are saddened by the fact that Iowa has lost half of its breeding herd since its peak in 1968 and feel that importing 12.5 million pigs to feed represents an economic opportunity that Iowa should take advantage of. He said Adair County alleges that the amount of nitrogen produced by NPPII's operation has been understated in their permit application due to the high percentage of gilts in their operation, however the number they used is conservatively high because once an animal is bred the amount of feed per day is limited to approximately five pounds because they will overeat and gain too much weight during gestation. On July 12, 2002 NPPII invited Adair County Supervisors and the Board of Health to tour their facility and learn about the operation. Unfortunately their offer was never accepted. He said he believe what the Commission was hearing during the public comment period was a fear factor of what might this facility be like but it has been their experience that once the operation is up and running the neighbors become very comfortable. He said Adair County improperly alleges that by Iowa law NPPII must calculate animal weight capacity based on the number of sows the facility could house based on the design and capacity. Iowa law clearly provides that animals used to calculate animal weight capacity should be based on the number that will be confined at any one time. He said he would like to address the point that was brought up about NPPII having 7,300 animals at another facility. That facility was started up earlier this year and they contracted Porcine Respiratory and Reproductive Syndrome (PRRS), which caused them to loose a lot of pigs. They were just coming out of PRRS before the fire. To rid themselves of the PRRS they were doing a PRRS rollover and had just brought in a lot of gilts. The other part of the animal weight capacity is the empty stalls. He said they do over design their buildings to allow for large groups of empty spaces because weaned sows need to be moved to breed. After they have been bred, sows need to be moved for gestation. He said they breed more than 300 sows a week and these sows must be kept together in order for them to be moved in an orderly fashion. He said the structural integrity issue has been answered sufficiently in their written response but that Dennis Johnson was there in case the Commission had any additional questions. He said Adair County improperly alleges that legislation and DNR rules pertaining to construction permits should be applied to manure management plan environments. NPPII's manure management plan is in compliance with Iowa law. He said Adair County also alleges that NRCS conservation plans cannot be maintained when injecting manure into D and E slopes. He said they inject into D and E slopes all of the time. NRCS compliance has to do with the cover that is left at planting time in the spring. He said he had

numerous conversations with Marvin Lundstedt who would not approve the injection of manure, but told them that they could apply manure on top of the soil. He said they are very uncomfortable with surface application and they feel injection is the right thing to do from the neighbor perspective. What they have done is to work with the DNR and NRCS to make sure that they can maintain cover compliance. He said the piece of equipment they use is called a no till shank that has an 8 inch point. In addition their manure applicator has been involved in numerous studies, including one done in conjunction with NRCS which resulted in a 57% cover after injection which is well over what is needed in the spring on these slopes. In cases where there was not enough cover left they have used a Phillips Harrow which brings the cover back up to the surface. Because of this they do not believe that there will be any problem with compliance and have agreed to allow the DNR to have notice prior to the application. He said Clint Hight, Adair County Attorney got it backwards when he said that they would not have enough acres if they applied the manure on top of the soil. When you spread on top of the soil the nitrogen will volatilize so you do not get as much into the soil therefore you would need 25 to 30% less acres to surface apply. He said the next issue deals with water requirements, at the two facilities that they have in operation in Shelby County they use well water with rural water back up and will use the same type system at this facility. He said they have not yet contracted with Zenia Water because they do not yet have the permit to build. He said they do an even draw over a 24 hour period, which will tax the well less. He said on the issue of separation distance from the neighbor, NPPII does not feel that this trailer house is a real residence and they are supportive of the DNR's decision on that issue. He said Autumn Dean notarized their deposit check on December 17, 2001 so the plans for this facility were known prior to the application for a permit. He said Adair County alleges that clarifications and adjustments made by NPPII at the request of the DNR constitute intentional deception. The fact is that NPPII has a long history of working with and addressing concerns of both neighbors and DNR officials. Changes are made for the overall enhancement of the permit and are an indication of NPPII's cooperation not deception. He said after the fire he was working with cleanup crews over the weekend and was testing some equipment. He said he did not realize that they were not allowed to put manure in with the dead animals so he pumped 4,000 gallons of manure out of the pit and into the hole that was dug to bury the animals. On Monday when the DNR official returned and informed him that he was not allowed to do that they immediately removed the crates and dead animals out of the pit, sucked up the liquid, scraped up the bottom and surface applied it on some alfalfa near his house.

Jerry Peckumn asked how the manure would be transported to the fields.

Gary Weiss said they use Central Farmers Coop who pump the manure into transport tractor trailers and then take it to the fields and put it into a frac tank. He said they pay 6/10 to 8/10 of a cent per gallon for the transport, which raises the cost of application.

Jerry Peckumn asked why they didn't just buy a farm where everyone wants the manure.

Gary Weiss said he was in Adair County because a local business requested that they locate there. He purchased land from people who wanted to sell the land to him and he has been approached by numerous neighbors who have told him that they would take the manure but only after this controversy is over and he has been contacted by numerous people about jobs.

Lisa Davis Cook asked if NPPII had gone over their permit level at the Shelby County facility.

Gary Weiss said they were not actually over their permit level because they filled the facility with gilts.

Lisa Davis Cook said she when her parents brought her home to their farm it was a mobile home that was place where her father was a hired hand. That was a real a residence to her then as the house she is living in is now.

Gary Weiss said he had dealt with five permits in the last six years and had been involved with three different trailers that popped up all of the sudden just about the them they got the permits ready. He said he has no proof that the residence would have been there with or without the proposed facility but it seems a little suspicious.

Gary Priebe said the Commission had been shown a map of all of the landowners who have pledged not to take NPPII's nutrient, he asked if they were planning to haul it ten miles.

Gary Weiss said they will haul it to the sites listed in the manure management plan; however it has been their experience that landowners who said they would never take the manure in Shelby County are now in line asking for it.

Gary Priebe asked who pays for the application of the manure.

Gary Weiss said they have the manure analyzed at lab so they know what the Nitrogen and Phosphorus values are and they sell it applied for approximately 70% of the nitrogen value, which comes to approximately \$25.00 an acre. In addition they pay \$2.00 an acre for the easements so that they have the right to spread on that land.

Gary Priebe asked if they charged more for hauling it ten miles away.

Gary Weiss said while the cost to NPPII is higher they do not charge the customer more.

Barbara Kalbach said the issue is not whether or not injection is a wonderful system, the issue is that the NRCS has said in Adair County; on D, E, and F slopes you shall not inject manure.

Gary Weiss said that in his conversations with Marvin he has learned that there are probably a dozen ways to achieve compliance in cover if necessary. Their plan is to be flexible and creative and do it right. The do not have any intention of causing the farmer to lose their government benefits.

Reza Khosravi said this project was submitted to the Department on February 15, 2002, Cyrus Rustin was assigned to do the engineering review, and Josh Sobaski reviewed the manure management plan. He said that Allison Manz from Field Office 4 was also present.

Cyrus Rustin said the department officially received the complete application on February 15 but at that time it was not approvable. The proposed facility will be located in an isolated part of Adair County approximately 7 ½ miles away from the town of Stuart. He said NPPII used the book numbers that are required in the rules to calculate the nitrogen. These numbers are based on ISU research. He said when he first reviewed this project he noted that the average weight for sows was less than the book value specified in the rules. He questioned the applicant on this issue and they responded that the breed is leaner and there is a higher replacement of gilts so animals do not get as large as they normally would, and they provided some sales records and statistics to back up their claims. He said despite this information, he, Josh Sobaski, and Sara Smith visited their Shelby County facility and noted leaner hogs. At that time they also had an extensive discussion about their management practice of leaving the empty spaces in order to properly operate the facility. He evaluated all of the information and NPPII voluntarily lowered the number of animals to be housed in the facility by approximately 550 animals so the draft permit was issued. He said in regard to Adair County's concern about structural integrity the design for this facility meets all of the department's standards. In addition Iowa Code requires that a professional engineer design all of the structures and that construction be supervised by a professional engineer. They are required to show that they have met the minimum standards in their design in order to get a permit however during the construction the professional engineer is obligated to go beyond the minimum standards if he feels there will not be enough support. He said he has not reviewed the manure management plan but based on the information he has received from those who did, the DNR usually will approve a manure management plan on highly erodible land through injection or surface application if the manure management plan includes the NRCS approved conservation plan. However due to the large amount of public input the DNR asked that local NRCS staff for input but was unable to get any definite answer from them. At that point management decided to follow their existing procedure and approve the plan. He said because there will be no flushing involved in this site the estimated water usage is between 20,000 and 30,000 gallons per day. There are two sources of water, the first being a well, and the second being a local water supplier. He said if pumping water from their well will interfere with the neighbor's water it is a local issue that will need to be resolved locally. He said there are only nine residences located within one mile of this facility with the closest one being 2,113 feet to the southwest. For this size of an operation the separation distance from the nearest residence is 1,875 feet. The trailer that is located closer than that separation distance did not meeting all of the requirements because they did not have a permanent sewage facility therefore the department did not consider it for the separation requirement. He said from the standpoint of an engineer he often finds himself writing to an applicant to ask for a correction of a deficiency or a clarification so he does not see the application process of NPPII as being deceptive. He said that NPPII had met all of their legal requirements and he does not see any statutory or rule basis for denying the permit.

Jerry Peckumn asked if there were a lot of manure management plans that have been approved where the manure is transported 10 to 12 miles.

Josh Sobaski said there have been some. He said he had question NPPII on this because of the research done at Iowa State that shows five to seven miles is the economic threshold to maximize the nutrients being produced on site. He said one thing you can do to justify taking the manure farther is to base it on phosphorus nutrient.

Gary Weiss said that while transporting the manure will be more expensive it would not be cost prohibitive. In addition he said while it is only speculation at this point, history has told them that once the facility is built they will have a lot more landowners close by that will want to take the manure.

Jerry Peckumn asked if the department assumed an average yield on all farms for the manure management plan

Josh Sobaski said it depends on the crop yield method being used in the application. NPPII determined that the crop yield levels that they were going to use would be the Iowa ag. statistic yields plus ten percent.

Terry Townsend said it is his understanding that the department states that the applicant must comply with the NRCS conservation plan for highly erodible land, he asked if by approving the manure management the department was stating that they have met it.

Wayne Gieselman said it is not the department's role to monitor compliance with the conservation plan; the farm has an approved conservation compliance plan, which is what the statute says the department must receive in order to approve a manure management plan. He said he has no staff that is trained to determine if the farm is in compliance with the plan.

Jeff Vonk said one of the points Autumn Dean made earlier is that the conservation plan is under appeal and the information is not available at this time. He said while he supports his staff's stance that it is not our role to monitor compliance; he does not believe the department can answer the question of whether or not the farm is in compliance.

Lisa Davis Cook asked if the department in essence approving a manure management plan knowing that it is not compliance with NRCS.

Wayne Gieselman said the department cannot make the judgment as to whether or not the land owner is in compliance with the compliance plan.

Jeff Vonk said that farmers agree to conservation compliance plans, which include long term rotation of crops and other types of practices. A very small percentage of these fields are actually checked each year by the NRCS and the department has no way of knowing whether or not these fields were checked in the recent past. He said what is now known based on the information given by Ms. Dean is that there was a whistle blower complaint filed on a number of these fields at which time the NRCS would have added them to their compliance check list, so we can assume they were checked this summer, however we do not yet have those results. The conservation compliance was a program to improve erosion control measures on highly erodible cropland. One of the biggest issues discussed in the 80's when it was first proposed and agreed to by Congress as to whether or not it meant that fields had to be brought within tolerable soil loss; and the final answer by policy was that that was not the case. Compliance plans do not necessarily indicate that these fields are being farmed within tolerable soil losses. They were chosen because they are an indicator of people doing conservation work.

Wayne Gieselman said that when he first came to the department and was looking at reviewing 3,000 manure management plans, at that they determined that it would be unrealistic to look at the conservation plans for each of them when the department did not have the expertise to determine if they were in fact in compliance. He decided at that time that if there was an approved conservation plan sent in with the manure management plan then that did in fact satisfy the legal requirements of the statute.

Lisa Davis Cook said the land that they are planning on applying the manure to has D, E, and F slopes; she asked if it was the overall Adair County NRCS policy that you cannot inject on these slopes.

Jeff Vonk said the Commission was provided a copy of the statement made by Marvin, which states that it is based on the residue left on the field.

Darrell Olson said that last year after applying on a 28 acre field of soybean residue, they had called NRCS out to measure the residue and they were told that it looked as though it would pass but it would have been close. They then used the harrow which pulled up additional cover.

Darrell Hanson said if injection is not allowed, the Commission has been told by the county that the applicant does not have enough acres to surface apply, and from the applicant that they have more than enough because surface applying requires less acres. He asked which statement was correct.

Josh Sobaski said that with surface application more gallons can be applied to the land, however there are separation distances requirements and those acres would need to be removed from the manure management plan.

Darrell Hanson said according to the rules if a residence is constructed or moved to a location within six months the owner has the burden of proving it is a residence. He asked when the trailer had been moved onto the property.

Cyrus Rustin said it had been place on the property two to three week prior to the Department receiving the application from NPPII.

Terry Townsend asked how the state would guarantee that the water usage would be kept under 25,000 gallons per day.

Cyrus Rustin said the DNR will take the applicant's word for it unless someone can prove otherwise.

Gary Weiss said their intention is to not apply for license to pull more than 25,000 gallons from the well because they are unsure if it will be able to handle it. He said they will have rural water for back up and their other two facilities are operating under the same situation without any problem. He said they could have applied for a permit for more water but they feel that if they stay under 25,000 gallons it will not affect any other wells.

Jeff Vonk asked if NPPII planned to hook up with rural water immediately.

Gary Weiss said he would be hooked up prior to any animals being put into the facility.

Lisa Davis Cook asked if Cyrus Rustin had referenced a possible violation at their other site.

Cyrus Rustin said after the fire the field office had reported that 26 more animals had died in their farrowing facility than their permit allowed.

Wayne Gieselman introduced Allison Manz, inspector from Field Office 4, who has done the investigatory work after the fire

Alison Manz said after NPPII's farrowing barn burned down it had been reported that 864 sows had perished but the facility had only been permitted for 840 sows. She reviewed a power point presentation that showed what the facility had been permitted for and what had been found after the fire according to the number of animals an the facility and the average weight from the permit application.

Wayne Gieselman said because animal weight capacity is a complex issue the department had not yet determined if there had been a violation of the permit.

Jeffrey Vonk said that whether or not there was a violation at this facility has no relevance to the permit being considered by the Commission.

Lori Glanzman asked why NPPII did not go to the extra expense of putting a sealant or a liner in the pits.

Dennis Johnson said they have designed the twelve foot pits differently from what the standards call for. He said the walls will be ten inches thick instead of the eight inches that are required. A few years back they did a test of a tank with water and found that it leaked two gallons per day per acre. In addition research has been done to find out what happens when the cement does crack, they used various crack widths from .001 up to .25 inches and put in six feet of manure, they found that even the widest cracks would plug themselves within ten hours of putting the manure into the structure and the smaller cracks did not leak at all.

Cyrus Rustin said that the applicant is required in their permit to check the drain outlets on a regular basis.

Darrell Hanson asked what happens if the conservation compliance plan is not approved after the permit is issued.

Wayne Gieselman said under the statute that the department first operated under manure management plans were submitted only once. If a field went out of compliance the applicator should not be applying to it and the manure management plan kept at the site should have been changed. The new statute requires a producer to submit an annual manure management plan.

However what is most likely to happen is even if the producer does not use the field in his manure management plan he can submit the same plan because he has valid easements on the fields.

<i>Motion was made by Rita Venner to affirm the permit. Seconded by Gary Priebe.</i>
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Rita Venner said from reading the information provided and seeing the information presented today she feels that Mr. Weiss has gone above and beyond the work that he needed to do. Farrow operations are very difficult; there are more variables to look at. Everyone makes a few mistakes but the mistakes made by Mr. Weiss are minor. She said recently she visited with a hog farmer in her county who purchased his feeders from Canada, which sent up a red flag in her mind that said “where’s Iowa.” She feels that Gary Weiss is doing Iowa a favor by supplying feeder pigs to local farmers.

Kelly Tobin said he has a problem with the steep slopes and the seepage. He said he has been a soil commissioner since 1981 and he knows that all of the problems have not been addressed for this permit.

Lisa Davis Cook said their title is Environmental Protection Commissioners and there have been far too many questions about the slope and the manure management plan; things that will greatly affect the environment of this state. She said she also has an issue with the residence, she feels if it is a place where people are planning to live it is a residence.

Kelly Tobin said he believes that the DNR and NRCS should be on the same page.

Darrell Hanson said when the Commission changed the rules to require manure management plans to be public prior to construction he had some concerns about whether or not it would raise false hopes and over burden the department. He now believes that there is some advantage to having this information available sooner because both permits have ended up better than it would have if the public had not known what was being planned. In both of today’s permits considerable local information has found its way to the department; allowing the producer to then go back and address those issues. The people who supplied that information should be thanked. He said in the oath of office it states that the Commission must uphold the rules and the procedures of the department. The question before them is whether or not the permit was issued according to the rules and the procedures of the department and he would have difficulty identifying a specific rule that had not been followed.

Jerry Peckumn said that this is a very difficult vote; Gary Weiss would like to be engaged in a legal business in the State of Iowa; the residents are concerned about the environment; and the Commission is charged with the task of protecting that environment. He said it seems to him that the manure management plan is on the edge. Although Gary Weiss has said that it is very possible that they will be allowed to apply the manure closer to the facility the Commission has to assume that he will apply it on the fields for which he has approval.

Chairperson Kathryn Murphy called for a vote on Rita Venner’s motion to affirm the permit.

Roll call vote went as follows: Rita Venner Aye; Lori Glanzman Nay; Kelly Tobin Nay; Gary Priebe Aye; Jerry Peckumn Nay; Darrell Hanson Aye; Lisa Davis Cook Nay; Terry Townsend Nay; Kathryn Murphy Aye. Motion failed.

Motion was made by Lisa Davis Cook to deny the permit for Natural Pork Production II for the following reasons. The manure management plan as submitted is flawed and lacks sufficient documentation to clearly support the requirements that all conservation programs and requirements are and will be met for highly erodible land as per DNR correspondence to Natural Pork Production II dated August 12, 2002 and that a residence exists within 408 feet of the proposed confined animal feeding operation in violation of the Iowa Administrative Code and further creating a known health risk for the occupants family. Seconded by Terry Townsend. The roll call vote went as follows: Lori Glanzman - Aye; Kelly Tobin Aye; Gary Priebe Nay; Jerry Peckumn Aye; Darrell Hanson Nay; Lisa Davis Cook Aye; Terry Townsend Aye; Rita Venner Nay; Kathryn Murphy Nay. Motion carried 5 to 4.

NATURAL PORK PRODUCTION II PERMIT DENIED

GENERAL DISCUSSION

Lori Glanzman said she as well as the other commissioners had been contacted by Robin Praisner to tour some confinement facilities, which she will be doing on Monday, October 14, 2002 at 1:00.

Kathryn Murphy asked Lori Glanzman to give them a summary of the tour at their next meeting.

Terry Townsend said he would be out of town and would not be able to attend the Commission meeting on October 21, 2002.

ADJOURNMENT

With no further business to come before the Environmental Protection Commission, Chairperson Murphy adjourned the meeting at 5:30 p.m., Monday, October 9, 2002.

Jeffrey R. Vonk, Director

Kathryn Murphy, Chair

Rita Venner, Secretary

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